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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,557	05/07/2001	Martin Glensbjerg	P6661OUSO	8743
136	7590	04/19/2005	EXAMINER	
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			LUM, LEON YUN BON	
			ART UNIT	PAPER NUMBER
			1641	

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/830,557

Applicant(s)

GLENSBJERG, MARTIN

Examiner

Leon Y. Lum

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ They raise the issue of new matter (see NOTE below);
 - (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 163-178.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive. On pages 18-22, Applicant argues against the Examiner's assertion that Figure 8A in Wilding et al teaches a device without a sample outlet. Specifically, Applicant refers to column 13, line 62 to column 14, line 4, which describes fluid being expelled from chamber 135. Applicant contends that since fluid is expelled, the "only way in which the first and later subsequent fluids can leave the device in Fig. 8A when the next fluid is added, is by being forced out of the device through the second 'inlet port' 133 at the bottom (of Fig. 8A) of the channel" (page 20, 1st paragraph). In addition, Applicant argues that the "second 'inlet port' is actually functioning as an outlet port, regardless of the label given the structure by the inventors or their patent attorney" (page 20, 1st paragraph). Furthermore, Applicant argues since fluid is pumped over the chamber for washing purposes (page 20, 2nd paragraph) and port 137 is an entry port, the device of Wilding et al "would be inoperable if none of the ports 133 of the device of Figure 8A functioned as a fluid outlet, because the reagents could never leave the device" (page 21, 1st paragraph). Applicant's conclusion that the expulsion of fluid from chamber 135 through an inlet port is unsubstantiated. First of all, there is no disclosure anywhere in Wilding et al that fluid actually leaves the device of Fig. 8A. Secondly, disclosure of the fluid being expelled from chamber 135, and washing of reagents in chamber 135, does not equate to fluid being expelled from the device itself, especially since the reference does not recite fluid leaving the device. In addition, the portion of the reference cited by Applicants in regards to the argument where "reagents could never leave the device" actually teaches that the reagents are immobilized and would therefore remain in the device (column 14, lines 31-34), thereby negating any use of an outlet. Furthermore, Wilding et al reference explicitly describes ports 133 as "entry ports" (column 13, line 41), which defines the ports as an entry point only. Applicant's assertion that argument that the "second 'inlet port' is actually an outlet port" is unsubstantiated and has no support in the disclosure. Since Wilding et al clearly and explicitly differentiates between inlet and outlet ports (column 3, lines 41-44) in the sample preparation device, the entry port 133 of the analytical device is considered to be an inlet only and cannot be used as an outlet. Therefore, the rejection made of record is maintained.

On pages 22-23, Applicant argues that the cited sections of Wilding et al by the Examiner relate to the sample preparation device and not the assay device. However, Wilding et al also discloses that the analytical device (assay device) is capable of performing filtration (column 16, lines 14-36; and Figure 10B) and includes magnetic components, which are capable of magnetic attraction (column 18, lines 27-41; and Figure 10A). Therefore, the rejection made of record is maintained.

On page 23, with respect to claims 173 and 177, Applicant argues that the volume cited by the Examiner refers to the metering chamber and not the detection chamber, and the reference does not teach the volume range of the claimed sample compartment. However, Applicant is directed to page 6-7 of the prior Office Action, which indicates that Wilding et al discloses a detection chamber with "at least one cross-sectional dimension on the order of 0.1um to 1000um" (column 7, lines 60-61). Since the detection chamber can have more than one cross-section with the range of 0.1um to 1000um, the chamber can have all three dimensions of length, width, and height with the same range, which would provide a chamber with volume ranges within the claimed range of 0.04ul to 4 ul. Therefore, the rejection made of record is maintained.

On page 25, Applicant argues that the secondary references "all teach analysis of a flowing stream" and that "such a device combination as taught or suggested in the cited references would be inoperable, as a flowing sample stream could not exist in a device without a sample outlet". Since Wilding et al reference teaches a device without a sample outlet, as explained above, and Applicant has failed to provide evidence that a flowing stream would not work in Wilding et al or a device without a sample outlet, the argument is not persuasive.

On page 26, Applicant contends that the obviousness rejection "appears to be based on the premise that Applicant's understanding of Wilding et al was mistaken and therefore no sample outlet is disclosed". In addition, on pages 27-29, Applicant states that the combination of Wilding et al with the secondary references do not disclose a device without a sample outlet. Since it has been established that Wilding et al does in fact teach a device without a sample outlet, the rejections are therefore maintained..